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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,384	07/16/2008	Harry Kany	JD-333-US	6034
24804	7590	09/02/2010		
Diversey, Inc. 8310 16TH STREET, M/S 509 PO BOX 902 STURTEVANT, WI 53177-0902			EXAMINER WEBB, GREGORY E	
			ART UNIT 1796	PAPER NUMBER PAPER
			MAIL DATE 09/02/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/589,384	<b>Applicant(s)</b> KANY ET AL.
	<b>Examiner</b> Gregory E. Webb	<b>Art Unit</b> 1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 20 January 2009.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s)       is/are withdrawn from consideration.

5) Claim(s)       is/are allowed.

6) Claim(s) 1-5,7-11 and 16-21 is/are rejected.

7) Claim(s) 6 and 12-15 is/are objected to.

8) Claim(s)       are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on       is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No.      .
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/88/08)  
Paper No(s)/Mail Date      

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date      

5) Notice of Informal Patent Application

6) Other:

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-5, 7-11, and 16-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Hei, Robert D.P. (US Patent 20030185902).

Concerning the acidic conditions, Hei, Robert D.P. teaches the following:

[0066] The dilute in-use aqueous solution, made by the addition of water to the liquid concentrate of the invention, is characterized by a light yellow to red color which serves as an indicator of solution effectiveness. As long as the color remains, the solution retains good killing properties. The effective time period is about 50 hours. **Generally for unbuffered or non-acidic formulations, as the reaction takes place, the pH of the solution increases from about 5 to about 10.** At the same time, the oxidation/reduction potential (ORP) increases accordingly. This is noteworthy since ORP normally is in inversely proportional to pH and, thus, indicates a very active oxidizing species being formed. According to the claimed invention, use solutions are aqueous solutions containing a source of a cation which is preferably a quaternary or protonizable nitrogen ammonium compound, an oxidant which is preferably a halogen containing oxidant or peroxide compound, a metal or ammonium halide and any resulting reaction products. It has been discovered that the preferred ternary molar ratio between the three added ingredients, the cation source, preferably a quaternary or protonizable nitrogen ammonium compound, the oxidant which is preferably a halogen containing oxidant or a peroxygen compound, and the halide source, e.g. metal or ammonium halides, respectively can range from 1:1:1 to 1:5:1 to 1:15:15. An optimal range is 1:3:1 to 1:3:3.

Concerning the quaternary antimicrobial system, and the claimed intended use, Hei, Robert D.P. teaches the following:

[0005] The invention also includes a **sanitizing liquid concentrate** composition which contains a cation source, preferably selected from a **quaternary** and protonizable nitrogen compound, an oxidant, preferably selected from a halogen containing oxidizer as I.<sub>sub.2</sub>, IO.<sub>sub.3</sub>, ICl, IBr, IO.<sub>sub.4.sup.-</sub>, BrCl, Cl.<sub>sub.2</sub>, OCl.<sub>sup.-</sub>, HOCl, ClO.<sub>sub.2.sup.-</sub>, ClO.<sub>sub.3.sup.-</sub>, ClO.<sub>sub.4.sup.-</sub>, Br.<sub>sub.2</sub>, HOBr, OBr.<sub>sup.-</sub>, BrO.<sub>sub.3.sup.-</sub>, and a mixture thereof, a halide source containing a metal halide, a halogen, or a mixture thereof, wherein said halide or halogen includes at least one iodine atom, and a non-mineral acid, or a mixture of a non-mineral acid and up to about 50% water by volume.

Concerning the claimed alkyl monocarboxylic acid, claimed dicarboxylic acid, and claimed hydroxy alkyl carboxylic acid (noting that this reference clearly teaches a combination of these components), Hei, Robert D.P. teaches the following:

14. A composition according to claim 11, wherein the non-mineral acid is selected from acetic, acetic acid, malic acid, **fumaric acid, maleic acid, glycolic acid, lactic acid, succinic acid, maleic acid, tartaric acid**, an organic sulfonic acid, butyric acid, **hexanoic acid, heptanoic acid, octanoic acid, nonanoic acid, decanoic acid, and mixtures thereof.**

Concerning the claimed detergent, the nonionic surfactant, Hei, Robert D.P. teaches the following:

[0063] Besides the aforementioned cationic and amphoteric surfactants for the active complex formation, the invention also includes standard nonionic, anionic, cationic, or amphoteric compounds for surface tension reduction, wetting, and detersiveness. For example, linoleic acid, alkyl glycosides, **alcohol ethoxylates, nonylphenol ethoxylates, alkanolamides, alkylbenzene sulfonates**, petroleum sulfonates, diphenylether sulfonates, alpha-olefin sulfonates, stearyl citrate, alkyl naphthalene sulfonates, Pluronics.RTM. and various short-chain fatty acids are all readily useful. The wetting agents are typically not necessary for affecting the microbial reduction, but are present for deteritive and surface tension reduction reasons; however, some may be employed as part of the synergistic, in-situ, antimicrobial formula.

#### ***Allowable Subject Matter***

3. Claims 6, 12-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Although the prior art teaches the combination of various carboxylic acids, the prior art is silent to the specific ratios and weight percentages of these components. The prior art fails to either anticipate or

render obvious the combination of these three groups of acids in the proportions required by these dependent claims.

4.

***Conclusion***

The remainder of the references cited are merely meant to demonstrate the state-of-the-art in acidic sanitizing cleansers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory E. Webb whose telephone number is 571-272-1325. The examiner can normally be reached on 9:00-17:30 (m-f).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory E. Webb/  
Primary Examiner, Art Unit 1796

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Primary Examiner  
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gew

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